IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No. 18023 of 2004

DATE OF DECISION : 28 -8-2006

Veer Bhan … Petitioner

versus

Special Secretary, Govt. of Haryana, Labour Department, and others. … Respondents

CORAM:- HON'BLE MR. JUSTICE J.S.NARANG
HON'BLE MR. JUSTICE ARVIND KUMAR

Present: Mr. Ashwani Bakshi, Advocate,
for Mr. B.S.Mittal, Advocate, for the petitioner

Mr. Ajay Chaudhary, DAG Haryana

…

ARVIND KUMAR, J:

Challenge in the present petition is to orders dated 16.4.2004 and 9.7.2004, Annexures P-1 and 3 respectively, whereby the appropriate government declined to refer the dispute raised by the petitioner-workman to the Labour Court.

In the petition, it has been averred by the petitioner that on 1.1.1991 he was appointed as Mali-cum-Chowkidar by respondent No.3 on daily wages. He served as such till 20.2.2004 when his services were terminated illegally by respondent-department. Petitioner-workman challenged the order terminating his services by filing demand notice before the Labour-cum-Conciliation Officer,Sirsa. Respondent No.1 vide order, Annexure P-1, rejected the reference of petitioner-workman on the ground that the department is performing the sovereign function of the State. Petitioner-workman challenged the said order by way of an appeal but that too came to be dismissed vide order, Annexure P-3. It is these orders which

are under challenge in the present petition.

Upon notice of the writ petition, written statement has been filed by respondent No.3 controverting the pleas so raised by the petitioner-workman. It has been pleaded that neither the respondent-department, namely, Excise and Taxation Department, falls within the definition of 'industry' nor the petitioner is a 'workman'.

We have heard the learned counsel for the parties and gone through the record.

The appropriate government cannot act as a judge and deal with the merits of the case while dealing with the reference sought by the workman for determination of lis by the appropriate forum, be it Labour Court or the Industrial Tribunal. The decision on merit is always in the exclusive domain of the Industrial Tribunal or the Labour Court, as the case may be. In the instant case, the question whether the department falls within the definition of 'industry' or not or whether the petitioner is a 'workman' or not, being question of fact was not within the domain of the government to adjudicate upon. It is only within the ambit of the jurisdiction of the Industrial Tribunal or the Labour Court constituted under the Act to determine this dispute. The Government cannot encroach upon the functions which have been specifically entrusted to the Industrial Tribunal under the Act. It was held by the Hon'ble Supreme Court in The M.P. Irrigation Karamchari Sangh vs. State of M.P. And another, AIR 1985 SC-860, that Section 10 of the Act permits appropriate Government to determine whether dispute “exists or is apprehended' and then refer it for adjudication on merits. The demarcated functions are (1) reference; (2) adjudication. Government should be very slow to attempt as examination of the demand with a view to decline reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of valid disputes. To allow the Government to do so would be to render Sections 10 and 12 (5) of the Act Nugatory.” In this context further reliance can be placed on the judgments of Hon'ble the Apex Court in the cases of Ram Avtar Sharma vs. State of Haryana, 1985 (2) SLR 57 (SC) and Dhanbad Colliery Karamchari Sangh Vs. Union of India, 1991 Suppl (2) SCC 10.

Considering the law on this point, we find that the impugned

orders passed by respondent No.1 are wholly unsustainable.

For the foregoing reasons, the writ petition is allowed. The impugned orders dated 16.4.2004 and 9.7.2004, Annexures P-1 and 3 respectively, passed by the appropriate government are set aside. The appropriate government shall pass orders afresh on the demand notice of the petitioner-workman, considering the law laid down by Hon'ble the Apex Court as well as the discussion made by us in the preceding para of this judgment. No costs.

(ARVIND KUMAR)
JUDGE

August 28,2006
JS

(J.S. NARANG)
JUDGE